IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5230 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SONIBEN RANCHHODLAL,DECD.THRO'HER HEIRS

Versus

AJAYKUMAR KANTILAL SHAH

Appearance:

MR AR SHAIKH for Petitioners

MR SANDIP C SHAH for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/02/2001

ORAL JUDGEMENT

Deceased Soniben sustained injuries and permanent partial disablement in a Motor Accident which took place on 16.12.1997. She was under treatment at the Shardaben Hospital at Ahmedabad. She was discharged from the Hospital on 23.12.1997. On 19.1.1998, she preferred a

Motor Accident Claim Petition No.96/98 claiming compensation of Rs.1,60,000/-. She also produced disablement certificate on 20.6.1998 showing that she had suffered 40% permanent partial disablement. Thereafter, on 10.10.1998, she passed away. The husband of the deceased preferred an application under section 140 of the Motor Vehicles Act,1988 for interim compensation of Rs.50,000/- claiming that the deceased Soniben died on account of injuries sustained by her in the said motor accident. The said application came to be dismissed by the learned Motor Accident Claim Tribunal on 19.4.1999. Feeling aggrieved by the said judgment and award, the appellant-original applicant has preferred this appeal before this court under Section 173 of the Motor Vehicles Act, 1988.

2. It has been mainly contended by him that the tribunal had not made a correct approach to the facts and circumstances of the case and the questions have not been properly dealt with. That in the above view of the matter, the present appeal be allowed and the judgment and award of the tribunal be quashed and set aside and interim compensation of Rs.50,000/- be awarded to the appellant-original claimant.

3. The appeal was admitted and notice was issued to and served upon the opponents. Mr Sandeep C Shah, learned Advocate appears on behalf of the Insurance Company. I have heard the learned Advocates for the parties and have perused the papers. The facts narrated hereinabove are not much in dispute. Therefore, it goes without saying that prima facie, there is evidence to show that the accident took place on 16.12.1997 and deceased Soniben sustained permanent partial disablement to the extent of 40%. Disablement certificate was also produced before the tribunal. Therefore, these aspects of the case could not be controverted by the learned Advocate for the respondent also. The main contention of the learned Advocate for the respondent is that there is no evidence to show that the deceased Soniben died on 10.10.1998 because of the injuries sustained by her in the aforesaid motor accident. There the learned Advocate for the respondent appears to be right. Prima facie, at this stage, no material has been placed before the tribunal to show that the deceased Soniben died on account of the injuries sustained by her in the aforesaid accident. In that view of the matter, the learned tribunal was justified in rejecting the application of the appellant from that angle. At the same time, it cannot be denied prima facie that the deceased sustained injuries and permanent disablement on account of the said

accident. In that view of the matter, she was entitled to make application for interim award under section 140 of the Motor Vehicles Act, 1988. It is true that in such an event, the award would be to the extent of Rs.25,000/-, but that award could not be denied to the present appellant simply because the application was not made by the deceased and simply because she died before she could make the application. It appears that she obtained disablement certificate little late and by the time she could make application for interim award under section 140 of the Motor Vehicles Act, she passed away. It may be that she was sick and, therefore, she could not have instructed to her Advocate to prefer application for interim awards. Any way, the facat remains that she has sustained permanent partial disablement to the extent of 40% and, therefore, the present appellant would be entitled to receive an amount of Rs.25,000/- as interim compensation under Section 140 of the Motor Vehicles Act. To that extent, the appellant is entitled to succeed in the present appeal, and, therefore, the appeal is required to be allowed. The judgment and award of the tribunal is required to be set aside and the interim award as aforesaid is required to be passed in favour of the appellant and against the respondents.

4. With the aforesaid facts and circumstances, this appeal is allowed. The judgment and award of the learned tribunal are set aside. The respondents are directed to pay to the appellant a sum of Rs. 25,000/- by way of interim compensation under section 140 of the Act of 1988. The respondents shall deposit the said amount before the tribunal and on such deposit, 40% thereof shall be paid to the appellant by crossed A/c. payee cheque. The balance shall be deposited in F.D.R. in the name of the appellant initially for a period of 5 years on usual terms and conditions. The appellant shall not be at liberty to withdraw any amount of the said F.D.R. No loan shall also be permissible on the said F.D.R. If the petition of the appellant is not finally disposed of within the span of 5 years, the said F.D.R. shall be renewed from time to time without waiting for the order of the court.

15.2.2001 [D P Buch, J.]
msp.